

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL L. WINECOFF and U.S. POSTAL SERVICE,
AIRPORT MAIL FACILITY, Jamaica, NY

*Docket No. 98-223; Submitted on the Record;
Issued September 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on May 22, 1996 causally related to her May 10, 1996 employment injury.

On May 10, 1996 appellant filed a traumatic injury claim alleging that while working on that date she experienced numbness, pain and discomfort to her fingers, hand and arm. The Office of Workers' Compensation Programs accepted appellant's claim for a sprain of the right hand and arm.

Following her employment injury, appellant received treatment from Dr. J. Groutous, an employing establishment physician. In reports dated May 10, 1996, Dr. Groutous diagnosed a right hand and arm strain and found that appellant was partially disabled from May 11 to 16, 1996. In a follow-up report dated May 16, 1996, a physician with the employing establishment clinic found that appellant should continue working limited-duty.

On July 11, 1996 appellant filed a notice of recurrence of disability on May 22, 1996 causally related to her May 10, 1996 employment injury. By decision dated September 26, 1997, the Office denied appellant's claim on the grounds that the medical evidence did not establish that she sustained a recurrence of disability due to her accepted employment injury.

The Board has duly reviewed the case record and finds that appellant has not established that she sustained a recurrence of disability on May 22, 1996 causally related to her May 10, 1996 employment injury.

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total

disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

In the present case, appellant sustained a sprain of the right hand and arm on May 10, 1996. Appellant began working in a limited-duty capacity. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of her claimed disability beginning May 22, 1996.

Appellant further has not submitted sufficient medical evidence to establish that she sustained a recurrence of disability causally related to her accepted employment injury. In support of her claim, appellant submitted form reports dated May 22, 1996 from Dr. Santos Angeles, Jr., an internist, who diagnosed tendinitis and noted that he should rule out carpal tunnel syndrome. Dr. Angeles found that appellant was totally disabled from May 10 to June 3, 1996 and checked "yes" that the condition was caused or aggravated by employment. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value without further detail and explanation.² As Dr. Santos did not provide any rationale supporting his conclusion, his opinion is insufficient to establish causal relationship.³

In a report dated May 30, 1996, Dr. Ben Benatar, a Board-certified orthopedic surgeon, discussed appellant's history of pain in her right arm and hand on May 10, 1996. He listed findings on examination and found that an x-ray of appellant's cervical spine revealed spinosis at C7. Dr. Benatar diagnosed cervical radiculitis. As Dr. Benatar did not address the cause of the diagnosed condition, his opinion is of little probative value.

In a disability certificate dated June 12, 1996, Dr. Benatar found that appellant was disabled from work. In a form report dated June 19, 1996, Dr. Benatar diagnosed a herniated nucleus pulposus of the cervical spine and opined that appellant was totally disabled. As Dr. Benatar did not relate the diagnosed condition to appellant's May 10, 1996 employment injury his opinion is insufficient to meet her burden of proof. Further, as the Office only accepted the claim for a sprain of the right hand and arm, appellant retains the burden of establishing that any other condition was caused or aggravated by her employment.⁴

In another form report dated June 19, 1996, Dr. Benatar diagnosed cervical radiculitis and checked "yes" on the form that the condition was related to employment. He provided as a rationale the fact that appellant used her hands at work. As discussed above, a physician's checkmark indicating causation, without sufficient rationale, is insufficient to meet appellant's burden of proof.⁵ While Dr. Benatar noted that appellant used her hands at work he provided no

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Alberta S. Williamson*, 47 ECAB 569 (1996).

³ *Lucrecia M. Nielson*, 41 ECAB 583 (1991).

⁴ *See Gary L. Whitmore*, 43 ECAB 441 (1992).

⁵ *Richard Krstyen*, 44 ECAB 227 (1992).

explanation, with reference to the specific facts of the case, regarding how the May 10, 1996 employment injury or other factors of employment caused or contributed to her cervical radiculitis. The opinion of a physician supporting causal relation must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate factual background.⁶

In form reports dated July 3, 1996, Dr. Benatar diagnosed a pinched nerve and found that appellant could resume limited-duty employment. In a form report dated August 6, 1996, Dr. Benatar released appellant to her regular employment duties. As Dr. Benatar does not find appellant disabled from work due to her employment injury, his reports are insufficient to establish her claim.

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.⁷ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof.

The decision of the Office of Workers' Compensation Programs dated September 26, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 14, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Connie Johns*, 44 ECAB 560 (1993).

⁷ *Donald W. Long*, 41 ECAB 142 (1989).